GOVERNMENT OF INDIA
COMMUNICATIONS
LOK SABHA

UNSTARRED QUESTION NO:3632
ANSWERED ON:12.12.2001
INTERNET SERVICE PROVIDERS UNDER SERVICE TAX NET
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Will the Minister of COMMUNICATIONS be pleased to state:

(a) whether Internet Service providers are being brought under Service Tax Net;

(b) if so, the details thereof;

(c) the guidelines issued/being issued in this regard; and

(d) the time by which these are likely to be implemented?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS(SHRI TAPAN SIKDAR)

(a) Internet Service Providers (ISPs) have been brought under Service Tax net.

(b) This levy has been brought into effect from 16th July 2001. Service Tax is leviable at the rate of 5% on the gross value of services provided by the ISPs.

(c) The Service Tax on `on-line information and data based access or retrieval` service was introduced by the Finance Act 2001. ISPs are covered under this category of taxable service. Central Board of Excise and Customs (CBEC) has also issued detailed instruction vide circular B-11/2001-TRU dated 09-07-2001. Relevant portions of the above stated circular are enclosed as Annexure.

(d) This levy has already been implemented with effect from 16th July 2001.

ANNEXURE

On-line information and database access and /or retrieval:

1. As per section 65(19) , 1994, the term ` On-line information and data base access or retrieval` means providing data or information, retrievable or otherwise, to a customer in electronic form through a computer network. The words `Data`, `information`, `electronic form` and `computer network` have the same meanings assigned to them in the Information Technology Act, 2000. As per section 65(72)(zh), taxable service means any service provided to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form.

2. The definitions given in the Information Technology Act, 2000 are as follows:- `Data` means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of a computer. `Information` includes data, text, images, sound voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche. `Electronic form` with reference to information means any information generated, sent, received or stored in media, magnetic, optical computer memory, microfilm, computer generated microfiche or similar device. `Computer network` means the interconnection of one or more computers through-

(i) the use of satellite, microwave, terrestrial line or other communications media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or nor the interconnection is continuously maintained.

3. In the context of this service, it may be relevant to point out the manner in which on-line information and database access/ retrieval is generally made available. First, the function of what is commonly known as Internet Service Providers (ISPs).The ISPs provide telecommunication network or gateways necessary to access messages and databases and other information holdings of content providers.

The second element is on-line information provision services which includes database services, provision of information on web-sites,

provision of on-line data retrieval services from data bases and other information, to all or limited number of users and provision of on-line information by content providers.

4. Internet Service Providers (ISPs) provide access to the web-sites through the computer network and the web-sites.Web-sites, in turn, provide the database or information. Some of the well-known ISPs operating in India are VSNL, MTNL, Satyam online, Bharti Tata, RPG, HCL, Wipro, BPL, Mantra online, DishnetThey normally charge the customers on the basis of usage of time (hours). They also provide dedicated lease lines on lump-sump payment basis. Clearly ISPsprovide service in relation to on-line information and database access or retrieval. They are an integral part of the internet operations and without their service, the data or information can neither be accessed nor retrieved. They are, therefore, liable to pay service tax on the amount charged from the customers whether on usage time basis or on lease line basis.

5. As regards paid web-sites, a few examples of Indian dot companies are, Indiainformer.com, CII online.com, who charge the customer for certain specific information contained in their website either in advance or credit basis. They shall be also liable to pay service tax on the paid services provided by them. It is obvious that where the information is supplied free of charge, no service tax is payable.

6. Point for clarification: A question has been raised as to whether e-commerce transactions (other than providing online information and data) are covered in the ambit of service tax. It is clarified that in e-commerce transactions, no service of online information and database access/retrieval is involved. Therefore, e-commerce transactions will not ordinarily be covered under the service tax net. Normally, the web sites do not charge the surfers for information on sale of goods or services offered by them. If at all they do, service tax will be payable on the amount charged for providing the information. Another point raised relates to applicability of service tax on inter-connectivity services provided by one ISP to another and the charges recovered for such services. It isunderstood that this is done to inter connect various networks so as to reach the server where the information is stored. It is informed that interconnection of one ISP to another is a commercial and technical arrangement under which service providers connect their equipment, networks and services to enable their customers to have access to the data or information. Through this arrangement, it is the customer of an ISP who ultimately receives on-line information and database access and/or retrieval service.

Service tax on the amount charged from him is payable. Therefore, interconnection charges paid by one ISPto another ISPare not liable to service tax. A question has also been raised whether the cyber cafes will be subject to service tax. It is clarified that the cyber cafes provide only the infrastructure such as computer terminals and internet connection. It is the ISP or web-sites who provide on-line access or retrieval of information. Therefore, cyber cafes are not liable to pay service tax. Services provided by ISPto cyber cafÃ© are taxable and the ISP will pay the tax on charges realized from the cyber cafÃ©.